

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.	)	Civil Action No. 04-CV-10421-JLT
Plaintiff,	)	
v.	)	Judge Joseph L. Tauro
	)	
HEALTHY SOLUTIONS, LLC, et al.,	)	
Defendants.	)	
	)	
CAPPSEALS, INC.	)	
Plaintiff-in-Intervention	)	
v.	)	
	)	
HEALTHY SOLUTIONS, LLC, d/b/a DIRECT	)	
BUSINESS CONCEPTS; ITV DIRECT, INC.;	)	
and DIRECT FULFILLMENT, LLC,	)	
Intervenor-Defendants.	)	
	)	
HEALTHY SOLUTIONS, LLC dba DIRECT	)	
BUSINESS CONCEPTS, a California limited	)	
liability company; HEALTH SOLUTIONS, INC.,	)	
a California corporation; ALEJANDRO	)	
GUERRERO, an individual;	)	
Counterclaim Plaintiffs,	)	
v.	)	
	)	
ITV DIRECT, INC., a Massachusetts corporation;	)	
DIRECT FULFILLMENT LLC, a Massachusetts	)	
limited liability company, and DOES 1-10,	)	
inclusive,	)	
Counterclaim Defendants.	)	

**DEFENDANTS AND COUNTERCLAIM PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER AGAINST PLAINTIFF ITV DIRECT, INC., FOR EXPEDITED  
DISCOVERY, AND FOR PRELIMINARY INJUNCTION [HEARING REQUESTED]**

Pursuant to Fed. R. Civ. Pro. 65 (a) and (b), the defendants Healthy Solutions, LLC (d/b/a Direct Business Concepts), Health Solutions, Inc., and Alejandro Guerrero request that the Court enter a temporary restraining order against the plaintiff, ITV Direct, Inc., in the form set forth in

the proposed temporary restraining order, order expedited discovery (as set forth in the attached proposed order), and issue an order to show cause re. preliminary injunction, as also set forth in the attached proposed order.

This motion is made on the grounds that defendant ITV Direct, Inc. has engaged in, has threatened to engage in, and is now engaged in various acts that constitute, inter alia, trademark infringement and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); unfair competition under common law; infringement of defendant Dr. Alejandro Guerrero's publicity rights under, inter alia, Massachusetts General Laws, Ch. 214, §3A and California Civil Code §3344.

In addition, the defendants request that the Court reach and apply and order the plaintiff ITV Direct, Inc. to set aside and to keep segregated in a separate escrow account, and not to seek to secret, alienate, disburse or otherwise hide from the defendants, the proceeds from the sale by ITV Direct, Inc. or any of its agents or representatives, of genuine Supreme Greens with MSM not previously applied to its purchases of Supreme Greens with MSM, and all further proceeds from the date of this order for the benefit of the defendants and the plaintiff in intervention pending the resolution of this case.

Finally, the defendants also request that they be permitted to engage in expedited discovery of the plaintiff, to be conducted before the hearing on the motion for a preliminary injunction, if any, as set forth in the proposed order.

As grounds therefore, the defendants state that, as set forth in their counterclaims, the memorandum of points and authorities in support of their application for a TRO, the declarations of Dr. Alejandro Guerrero, Michael Howell, Gregory Geremesz, Robert Maihos, and Todd Stanwood, they are reasonably likely to succeed on the merits of their claim, they are likely to

suffer irreparable injury if a temporary restraining order and preliminary injunction are not granted, the balancing of the equities favors granting the requested relief, and the public interest favors the requested temporary restraining order and preliminary injunction.

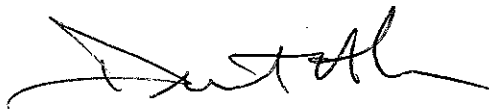
Moreover, on April 14, 2004, this Court entered a preliminary injunction, in favor of the intervenor Cappseals, Inc., enjoining ITV Direct, Inc. from disbursing to the defendant Healthy Solutions LLC any amounts it is due and enjoining Healthy Solutions LLC from disposing of any such funds it may be due or of transferring any interest in such funds. The order the defendants now request simply would prohibit ITV Direct, Inc. from frustrating a judgment in favor of the defendants or Cappseals, by dissipating the amounts at issue.

**DEFENDANTS REQUEST A HEARING ON THEIR APPLICATION.**

Respectfully submitted,

Handwritten signature of Becky V. Christensen in black ink. To the right of the signature is a circled stamp that reads "DFT".

Becky V. Christensen, Esq. CA State Bar# 147013  
LEVIN & O'CONNOR  
384 Forest Avenue, Suite 13  
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(949) 497-7676

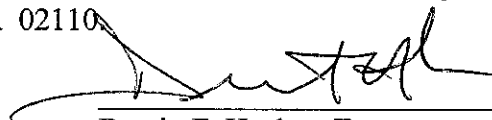
Handwritten signature of Dustin F. Hecker in black ink.

Dustin F. Hecker, Esq. BBO# 549171  
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Prudential Tower  
800 Boylston Street  
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(617) 973-6131

Dated: April<sup>20</sup>, 2004

**CERTIFICATE OF SERVICE**

I, Dustin F. Hecker, hereby certify that on this 20<sup>th</sup> day of April, 2004, I served a copy of the within document by facsimile and regular mail on Christian H. Pedersen, Esq., Metaxas, Norman & Pidgeon, LLP, 900 Cummings Center, Suite 207T, Beverly, MA 01915; and by hand on Katherine E. Perelli, Esq., Peter S. Brooks, Esq., Christopher F. Robertson, Esq., Seyfarth Shaw LLP, Two Seaport Lane, Suite 300, Boston, MA 02210, and Daniel J. Kelly, Esq., Gadsby Hannah LLP, 225 Franklin Street, Boston, MA 02110.

Handwritten signature of Dustin F. Hecker in black ink.

Dustin F. Hecker, Esq.